

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

GARY PRUIETT, et al.

Plaintiffs

v.

VILLAGE OF ELMWOOD, et al.

Defendants

Case Number: A1209235

Judge Robert P. Ruehlman

DECISION

On July 10th, 2012 The Village Counsel of Elmwood Place, a small village located in Hamilton County, Ohio passed ordinance 9-12 (The Ordinance). This ordinance created The Automated Speed Enforcement Program. The ordinance added Section 77 to the Village's codified ordinances for the implementation of the Automated Speed Enforcement Program. The ordinance provides that the "owner of a vehicle shall be liable for a penalty imposed for speeding." The ordinance also provides that the recorded images produced by the Automated Speed Enforcement Program are prima facie evidence of a violation. In addition, the ordinance assumes that the owner of the motor vehicle was operating the vehicle at the time of the offense.

On July 14th, 2012, the Village of Elmwood Place entered into a service agreement with Optotrafic, LLC (service agreement), Optotrafic is a Maryland for profit Corporation that provides automated speed and traffic enforcement systems to local governments. The service agreement provides that Optotrafic would operate the Automated Speed Enforcement Program

for the Village of Elmwood Place. The operation of the Automated Speed Enforcement Program by Optotraffic includes:

- Installation of cameras and equipment to measure speed and produce images of vehicles allegedly violating speed limits.
- Obtaining from BMV records the identity of the owner of vehicles alleged to have violated the speed limits.
- Printing and mailing citations, or Notices of Liability, to the owners of vehicles alleged to have violated speed limits.
- Operation of a phone number for recipients of citations to make inquiries and receive information.
- Retention of a collection system to pursue any imposed fines and fees.

In exchange for providing this service to Elmwood Place, Optotraffic receives 40% of all revenues resulting from payments of citations and related fees.

Elmwood Place recently passed Ordinance No. 12-12, which announced that anyone requesting an “Administrative Hearing” will be assessed a \$25.00 fee, even when that request was made before the law’s passage.

Elmwood Place began operation of the Automated Speed Enforcement Program on September 1, 2012. One speed camera was placed in a school zone on Vine Street and a second speed camera was placed in a residential neighborhood. The hours of operation are twenty-four hours per day, seven days per week throughout the year. Vehicles traveling over the posted limit are subject to enforcement action. This action is based on evidence captured by the Automated

Speed Enforcement Program. The owner of a vehicle subject to enforcement action receives a Notice of Liability. The Notice of Liability is a Civil, not a Criminal, proceeding.

The Civil penalty is \$105.00 and it does not involve points on a driver's license or on a driver's record. The fine is enforced like Civil Judgments. Elmwood Place stated that it may use collection services, report non-payment to credit agencies and deprive owners of their vehicles.

Thousands of these tickets have been issued since September 1, 2012 and thousands of Notices of Liability have been issued. Of the money collected through this program, 40 percent of the revenue goes to Optotrafic and 60 percent stays in the Village of Elmwood Place. With approximately 115 Notices of Liability being issued per day, at \$105.00 per violation, Elmwood's Automated Speed Enforcement Program is capable of generating approximately \$362,250.00 per month. Over a six month period, Elmwood Place is capable of collection over 2 million dollars.

Individuals and businesses in Elmwood Place have suffered damages as a result of the operation of the Automated Speed Enforcement Program. Businesses have lost customers who now refuse to drive through Elmwood. Churches have lost members who are frightened to come to Elmwood and individuals who have received notices were harmed because they were unable to defend themselves against the charges brought against them.

ISSUES:

PUBLICATION AND POSTING

Plaintiffs assert that Elmwood Place violated the publication and posting requirements of the Ohio Revised Code when it passed the Ordinance established its Automated Speed Enforcement Program. The Court does not need to decide this issue because the case will be resolved under the issue of Due Process.

DUE PROCESS

The Plaintiffs assert that the ordinance violates the Ohio Constitution. The Constitution of the State of Ohio guarantees that every person injured in his lands, goods or personal reputation shall have remedy by “due course of law”. In other words, a person facing civil penalties must be afforded the opportunity to defend, enforce or protect their rights through presentation of their own evidence, confrontation and cross-examination of adverse witnesses, and oral argument. *Goldberg v. Kelly*, 397 US 254 (1970). Moreover, the terms, “due course of law” under the Ohio Constitution and “due process of law” under the United States Constitution are interpreted identically. *Adler v. Whitbeck*, 44 Ohio State 539 (1886).

DECISION

The Court finds that the ordinance fails to provide due process guarantees to any person receiving a Notice of Liability, from The Village of Elmwood Place.

Revised Code 4511.094 requires that traffic law photo-monitoring devices to enforce traffic laws cannot be used in a village, unless a sign is erected within that village, warning motorists that such a monitoring device is operating. The Chief of the Elmwood Place Police Department testified that it was possible for a motorist to enter the village and go through a speed enforcement area without ever passing a warning sign.

Furthermore, when a speed monitoring device records a violation, a motorist is mailed a Notice of Liability. The violation is based on a report and a photograph from the speed monitoring unit. The report contains the speed of the vehicle indicating that the vehicle was traveling faster than the speed limit. The photograph shows the car and its license plate number. The owner of the vehicle is then sent a Notice of Liability and is told to pay a civil penalty of \$105.00. If the owner of the vehicle wants to contest the liability, he or she must pay \$25.00 to the Village of Elmwood and request a hearing before a hearing officer and there is no assurance that the fee will be returned if the appeal is successful. However, the hearing is nothing more than a sham!

The so called witness for Elmwood Place testifies from a report produced by the company that owns the speed monitoring unit. This witness has no personal knowledge of the speeding violation and therefore, their testimony is based solely on hearsay. The accused motorist has no ability to cross-examine the witness because the witness was not present when

the violation occurred. There is no opportunity to obtain any discovery about the device or to subpoena any witnesses that may have knowledge of the device. In fact, the device is calibrated once a year; even though it may have been subjected to 12 months of varying amounts of rain, snow, sun, storms, ice, wind and lightning. Moreover, the device was not calibrated by a certified Police Officer, but rather it was calibrated by Optotraffic, the corporation that owns the device. Remember, Optotraffic has a financial stake in this game. I used the term “game” because Elmwood Place is engaged in nothing more than a high-tech game of **3 CARD MONTY**. It is a scam that the motorists can’t win. The entire case against the motorist is stacked because the speed monitoring device is calibrated and controlled by Optotraffic. Remember, Optotraffic had already received approximately \$500,000.00 at the time of the January 9th, 2013 hearing, before this court.

To compound this total disregard for due process, Elmwood Place has another scheme up its sleeve. If a motorist tries to convince a hearing officer that he or she was not the driver of the offending vehicle, the ordinance requires that the owner making such a claim provide the name and address of the driver of the vehicle. If the driver was the owner’s spouse, the ordinance requires the owner to testify against his or her spouse, in violation of the spousal immunity statute Revised Code 2917.02 (D).

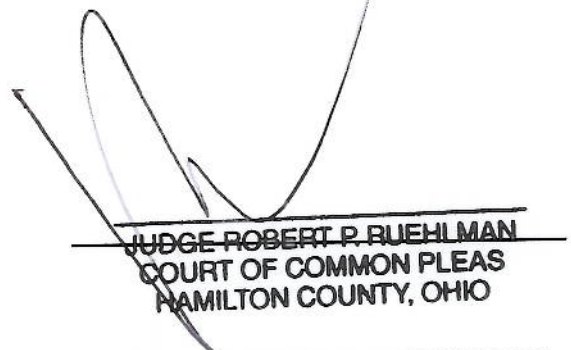
The Court renders Judgment in favor of the Plaintiffs and finds that the ordinance is invalid and unenforceable. A permanent injunction is granted to the Plaintiffs prohibiting further enforcement of the ordinance, by the Defendants.

Court costs, other reasonable expenses and attorney fees are to be assessed against the Defendants.

BOND

Civil Rule 65 (C) provides that an injunction is not operative until the Plaintiffs post a bond to cover any potential damages that may be sustained by the Defendants, if it is finally decided that the injunction should not have been granted.

Since the Defendants have stated that the goal of the ordinance was not to raise revenue, but rather to increase compliance with speed limits, the generation of revenue is not an issue for the Defendants. Therefore, the surety is set in the nominal amount of \$1.00.



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